[fol. 11a] EXHIBIT TO STIPULATION

Circular No. 57. (Cir. 57)

War Department,
Washington, October 31, 1929.

	Section
General prisoners—Changes in AR 600-375	I
Inspections of posts and camps—Changes in AR 20-10	II
Cash discounts—Changes in AR 35-6200	III
Service national standard authorized for brigades and higher units	IV
Changes in AR 210-65	V

I. General prisoners—Changes in AR 600-375.—Pending the publication of changes in AR 600-375 (Personnel—General Prisoners, General Provisions), May 19, 1923, the following changes in those regulations are published for the information and guidance of all concerned.

1. Paragraph 2a is changed to read:

2. Commanding Officer. a. General.—Full responsibility for the security, management and rehabilitation of prisoners is vested in the commanding officer, who may supplement the regulations contained herein as he may deem appropriate at the particular place of confinement, provided such supplementary instructions are formulated in accordance with these regulations, with well-established principles of security, discipline, cleanliness, efficiency, and humanity. He will assure himself by frequent inspections as to the proper enforcement of all prison regulations.

2. Paragraph 14h (as changed by paragraph 1, Section III, Circular No. 9, War Department, 1929) is rescinded and the following substituted therefor:

h. Restoration to Duty of General Prisoners.—The War Department desires to afford general prisoners serving sentences at posts the same opportunity for rehabilitation and restoration to duty as those serving sentences at a United States Disciplinary Barracks. Prison officers will, therefore, immediately after the arrival of a general prisoner and each six months thereafter, determine whether

he is suitable material for and desires restoration to duty. All general prisoners, except those convicted of felony, who are found upon examination to be mentally and physically qualified for military service, whose civil and military records warrant consideration for restoration to duty and who desire such restoration, will thereupon be designated as "probationers." In so far as local conditions permit, probationers will be given the military training referred to in paragraph 17b (1) and will be accorded the privileges authorized by paragraph 6g, AR 600-395 for probationers serving at disciplinary barracks.

A probationer may at any time after serving one-third of his sentence, and in sufficient time to permit action thereon prior to expiration of term of confinement, make written application for restoration. The application, accompanied by a statement of the probationer's civil and military record and of his physical condition will be forwarded through channels, with remarks and recommendation of the officers forwarding it, to the officer exercising general court-martial jurisdiction over the command or, where dishonorable discharge has been executed, to the Adjutant General. Recommendation as to assignment, should probationer be restored to duty, will also be made.

The provisions of this paragraph are not to be construed as impairing the right of the corps area commander or other competent authority to exercise, pursuant to A. W. 50 and 52, the power to remit or suspend the unexecuted part of a sentence and to restore the prisoner to duty at any time while the sentence is being served.

3. Paragraph 21d (1) is changed by changing (c) and adding (e) as follows:

(c) Folding arms.

(e) Requiring silence at meals, except while at attention or as a temporary disciplinary measure.

(A. G. 253 (10-7-29).)

II. Inspection of Posts and Camps—Changes in AR 20-10. —Pending the publication of changes in AR 20-10 (Inspector General's Department—Inspection of Posts and Camps), December 13, 1923, the following changes in those

[fol. 11b] regulations are published for the information and guidance of all concerned:

5. Subjects Embraced.

* * * * * * *

h. Care and treatment of general prisoners, methods pursued for their rehabilitation and the results thereof.
(A. G. 253 (10-7-29).)

III. Cash Discounts—Changes in AR 35-6200.—Pending the publication of changes in AR 35-6200 (Finance Department—Prompt Payment of Bills and Accounts), March 24, 1922, the following changes in those regulations are published for the information and guidance of all concerned:

2. Cash Discounts.—

* * * * * * *

d. (1) In general, the deduction of discounts under agreements by the Government to purchase supplies is authorized only when the vendor has made an express offer of such discounts, and a mere statement as to discounts, shown on the printed commercial bill of the vendor submitted for payment, is not generally to be regarded as such an express offer. See 23 Comp. Dec. 141; 2 Comp. Gen. 83; 5 id. 739.

(2) The decisions cited in (1) above pertain to formal contracts only. In cases of informal purchases, a statement as to cash discounts appearing on a dealer's invoice should be considered an offer of cash discount of which advantage should be taken, and any protest by a dealer against deduction of such a discount, on the ground that his bid or the procuring instrument was silent as to cash discount, or that the procuring instrument showed the price to be net, should be considered as a claim to be submitted to the General Accounting Office for direct settlement.
(A. G. 158 (10-15-29).)

IV. Service National Standard Authorized for Brigades and Higher Units.—Section IV, Circular No. 59, War Department, 1929, is amended by adding at the end thereof the following sentence:

Although not authorized for issue, silken national standards, silk individual flags, and silk distinguishing flags may

be purchased by headquarters of brigades and higher units for use on ceremonial occasions.

(A. G. 424.5 (10-18-29).)

V. Changes in AR 210-65.—Pending the publication of changes in AR 210-65 (Posts, Camps and Stations—Exchanges), June 29, 1929, the following changes in those regulations are published for the information and guidance of all concerned:

Paragraph 7½ added.

7½. Sales; to Whom Made.—Post or unit exchanges will sell to, or make purchases for the following named persons and organizations only. Purchases by individuals will be limited to those required for their own use or for the use of dependent members of their families.

a. Officers, warrant officers, and enlisted men of the Army, Navy, Marine Corps, and Coast Guard, on the active or retired list.

b. Commissioned officers of the United States Public Health Service.

c. Contract surgeons.

d. Army nurses.

e. Members of the Officers' Reserve Corps and the Enlisted Reserve Corps while on active duty.

f. Officers, warrant officers, and enlisted men of the National Guard and National Guard Reserve when in Federal service.

[fol. 11c] g. Dependent members of families of persons enumerated in a to f above, during the absence of such persons and upon written authority of the post, camp or station commander.

h. Hospital matrons.

i. Civilian employees authorized for service abroad, having a status recognized by the War Department as part of an expeditionary force.

j. Civilians employed with the Army and quartered at stations so located as to make the purchases from civilian

agencies impracticable, upon written authority of the post commander.

k. Honorably discharged officers, warrant officers, and enlisted men of the Army, Navy, Marine Corps, and Coast Guard in Army hospitals who are being cared for by and are receiving medical treatment from the United States Veterans' Bureau, upon presentation of a certificate from the regional officer or medical officer under whom they are undergoing medical treatment.

l. Officers, warrant officers, and enlisted men of the National Guard and National Guard Reserve——

(1) When in attendance at service schools or when attached to organizations of the Regular Army for routine practical instruction.

(2) When engaged in joint maneuvers with the Regular Army.

(3) When in camp at a station where exchanges are being operated.

m. Persons in actual attendance at Reserve Officers' Training Corps Camps and Citizens' Military Training Camps, at a station where exchanges are being operated.

n. Officers and crews of vessels of the Lighthouse Service and light keepers and depot keepers of the Lighthouse Service.

o. Units, and the components thereof, of——

(1) Army, Navy, Marine Corps, Coast Guard and United States Public Health Service.

(2) The Organized Reserves while on active duty.

(3) The National Guard and National Guard Reserve when in Federal Service or when engaged in joint maneuvers with the Regular Army or when in camp at a station where exchanges are being operated.

(4) Reserve Officers' Training Corps when in camps for such corps at stations where exchanges are being operated.

(5) Citizens' Military Training Camps when such camps are located at stations where post exchanges are being operated.

(A. G. 463.7 (8-15-29).)
By order of the Secretary of War.
C. B. Summerall, General, Chief of Staff.
Official.
C. H. Bridges, Major General, the Adjutant General.

[fol. 12] IN SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties entered into and signed a stipulation of facts, dated January 23, 1931, and filed it in open court July 16, 1931.

The cause came on regularly for trial July 16, 1931, before the court without a jury, U. S. Webb, Attorney General of the State of California, by H. H. Linney, appearing for the plaintiff, and Pillsbury, Madison & Sutro, by Vincent K. Butler, Jr., for the defendant. The cause having been submitted for decision, the court makes its findings of fact as follows:

Findings of Fact

I

All of the facts set forth in said stipulation of facts, filed herein July 16, 1931, are true.

Conclusions of Law

As conclusions of law from the foregoing facts, the court [fols. 13 & 13½] finds:

I

The plaintiff is entitled to take nothing by reason of its complaint.

II

The defendant is entitled to judgment against the plaintiff, together with its costs of suit.

Judgment is hereby ordered to be entered accordingly.
Dated July 13th, 1932.
C. J. Goodell, Judge of the Superior Court.

[fols. 14 & 14½] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. No. 16

No. 214,441

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant

JUDGMENT

The above entitled cause came on regularly for trial on the 16th day of July, 1931, upon an agreed statement of facts, before the court sitting without a jury, U. S. Webb, Attorney General of the State of California, by H. H. Linney, appearing for plaintiff, and Pillsbury, Madison & Sutro, by Vincent K. Butler, Jr., for defendant. The cause was submitted for decision, and the court having heretofore made and caused to be filed herein its written findings of fact and conclusions of law, and being fully advised:

It is ordered, adjudged and decreed that the plaintiff take nothing by reason of its complaint, and that the defendant have judgment against the plaintiff, together with the defendant's costs and disbursements incurred in said action in the sum of $2.50.

Dated July 13th, 1932.

C. J. Goodell, Judge of the Superior Court.

[fol. 15] IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPT. No. 16

No. 214,441

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant

OPINION

The question presented for decision is whether gasoline sold by the defendant to the Post Exchange at the Presidio

of San Francisco is taxable by the State under its Gasoline Tax Act. The sales were made by delivery in barrels and tank trucks within the boundaries of the Military Reservation. The stipulation shows that 420 gallons were sold which, at the 3 cent tax, comes to only $12.60. Despite the trifling amount involved the case has received thorough and careful attention at the hands of counsel and has been ably and exhaustively briefed for it is a novel question in this State.

The payment of the tax is resisted upon three grounds, the first being that sales in the Presidio are not within the State, the second that deliveries from San Francisco to the Presidio constitute commerce within the exclusive jurisdiction of the United States, and the third that the sales were made to a department of the Federal Government.

It is evident from the face of the Gas Tax Act that the reason for its enactment and the policy underlying it was to compel the motorists using the highways of this State to pay for the construction and maintenance of the roads [fol. 16] over which they drive. The provisions of Section 13 show this plainly. Moreover, it is common knowledge and the Supreme Court recognizes this when they say that "The clear intent of the law was to levy an excise or occupation tax upon distributors of motor vehicle fuel, giving such distributors, however, ample opportunity to fully indemnify themselves by adding the amount of the tax to the selling price of the fuel and thus in effect collect the tax from the consumer" (People v. Ventura Refining Co., 204 Cal. 286, at 294). And, as to this indirect effect of the tax upon the consumer-motorist see Old Homestead Bakery, Inc. v. Marsh, 75 Cal. App. 247, at 255-256. This is conceded by the State.

The Act (Sec. 1, c) defines the distributor to be one who sells motor vehicle fuel in this state, being careful to include those who import and then sell it here, as well as those who find it in California and sell it here.

Section 3 of the Act provides that "Every distributor shall * * * pay a license tax to the state * * * for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor in this state and sold and delivered by him *in this state,* or imported by such distributor into and distributed or sold by him *in this state* otherwise than in the original package."

We have seen that the policy underlying the legislation and the end it was invented to serve, was to make the ultimate consumer, the motorist, pay indirectly for the roads over which he travels and that in practice it works out this way. We have seen also that the statutory machinery designed as a means to accomplish this end, that is, to get the money into the hands of the State and thence into the road funds of the State and of the several counties, is a levy upon the distributor of 3 cents for each gallon of gas sold in California. In this discussion the indirect end sought [fol. 17] should not be confused with the direct means employed for its accomplishment. It is, after all, the means, i. e. the legal machinery of the thing, with which we are concerned.

Respecting the first point, then—the claim of the State that sales to the Post Exchange are sales in the State and the claim of the defendant that they are not, the position of the Attorney-General, as to the type of tax, is stated as follows: "The tax is not a sales tax, but a tax imposed upon the refiner and distributor of motor vehicle fuel, measured by the amount of such fuel distributed." To this is added: "As is well known, the tax is in effect passed on to the ultimate consumer and constitutes payment for the use of the highways of the State which are built and maintained by the State." The first statement has to do with the method by which the tax is levied, the second with its consequences. In the Act there is no legal connection or relation between the one and the other. The fact that the tax falls ultimately on the motorist by being added to the price is something with which the Act is not concerned so far as appears from its language. It simply works out that way in practice as everybody knows and as the Courts sensibly have recognized (See Ventura and Old Homestead cases, supra). However, in testing the legal question of taxability should we bring the indirect and ultimate consequences of the legislation in to the discussion?

The tax, it is agreed on all sides, is measured by the amount of gasoline distributed. The taxpayer has a right to insist that the yard-stick be not extended or prolonged beyond its statutory length, which is fuel "sold and delivered by him in the State".

The agreed facts settle the inquiry as to sale and de-
[fol. 18] livery, for they show that the sales were not consummated until delivery was effected by the transfer of the fuel from the barrels and tank trucks into the containers at the Post Exchange, within the boundaries of the Presidio.

Broadly and geographically speaking, the Presidio is of course in California. But, whether it is in this State in a legal and jurisdictional sense, namely within the taxing jurisdiction of the State, is the precise question.

In the able and carefully prepared memorandum written by Colonel Graham of the Judge Advocate General's Department to the Secretary of War, dated May 3, 1930, a copy of which is part of the brief of amici curiæ, there is set forth the history of the Presidio of San Francisco substantially as it is found in the case of United States vs. Watkins, 22 Fed. 2nd 437, cited by defendant. This shows that by the Act of March 2, 1897 (Stats. 1897, p. 61) there was a cession by the State to the Federal Government of whatever jurisdiction then remained in the State. The only reservation was the usual one of the right to serve and execute civil and criminal process. The wording of the reservation respecting criminal process limiting it to that only "against any person or persons charged with crimes committed *without* said lands", indicates rather clearly an intent to surrender jurisdiction to try and to punish crimes committed within the lands ceded. An offense, then, committed in the Presidio would not be in the State and hence not cognizable by our Courts (See People v. Mouse, 203 Cal. 782). This seems to me to be a pretty good test. If exclusive jurisdiction has been transferred, how can it be said that goods delivered in the Presidio are still in the State for the purpose of measuring a tax when a theft of the same goods in the Presidio would not be "in the State" [fol. 19] for the purpose of trial and punishment.

The defendant argues that "the Presidio is as much without the State of California as any other State or foreign territory". The Government put it this way: "Federal Reservations are *islands* within the territorial jurisdiction of the States" and "The Presidio is outside the State as truly as Nevada." The "island" idea is elaborated upon in Concessions Co. v. Morris, 109 Wash. 46, 186 Pac. 655, with respect to Camp Lewis (carved out of the

State of Washington) as follows: "thereby there has been created an independent sovereignty the territory of which is surrounded by the state of Washington, but over which the state of Washington has no jurisdiction. A territory has been created which resembles that of the District of Columbia * * *". The Washington Court held that under the law of that State "only personal property in the State of Washington can be listed for taxation".

The Supreme Court of the State of Washington in the Concessions Co. case seems to have based its decision upon several grounds. The first was the constitutional ground (Art. I, Sec. 8, Cl. 17); the second, a provision exempting from taxation, found in the Washington laws of 1915, page 358; the third, the law of 1917, page 2, giving legislative consent to the donation of the land from Pierce County; the fourth, and last, a provision of Sec. 9101 of Remington & Ballinger's Codes providing that only property in the State could be listed for taxation. It would seem that only one of these grounds was necessary for the decision, and that one, the constitutional ground first mentioned. (See Surplus Trading Co. vs. Cook, 281 U. S. 647.)

The Camp Lewis Case it is true, has to do only with the taxation of personal property (movables) located within the [fol. 20] Military Reservation, which is not the question in this case, but parenthetically it might be remarked that if the State may not constitutionally tax movables found upon a Military Reservation ceded to the Federal Government, there would seem to be no valid reason why it could use personal property sold and delivered within a Military Reservation so ceded as a measure for a tax such as the one involved in this case, levied against a distributor within the State. This is only noted incidentally and in passing, and is not necessary to the discussion. Aside from that there is the purely territorial question, and in this connection the Camp Lewis Case holds in substance that a Military Reservation so ceded is no longer State territory, but becomes Federal territory. Either way the question is approached, either from the jurisdictional or territorial standpoint, it would seem that the Camp Lewis Case is authority on the subject. But, there is still higher authority.

The Surplus Trading Company case, although it does not mention the Camp Lewis case, holds substantially the

same as the Washington Supreme Court held in that case. It is interesting to note that in the opinion (at page 652 of 281 U. S.) in discussing the provision of the Federal Constitution with respect to the exercise of exclusive legislation in all cases whatsoever "over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, says that 'Exclusive legislation' is consistent only with exclusive jurisdiction. It can have no other meaning as to the seat of government, and what it means as to that it also means as to forts, magazines, arsenals, dock-yards, etc. That no [fol. 21] divided jurisdiction respecting the seat of government is intended is not only shown by the terms employed, but is a matter of public history. Why as to forts, magazines, arsenals, dock-yards etc., is the power given made to depend on purchase with the consent of the Legislature of the State if the jurisdiction of the United States is not to be exclusive and that of the State excluded? The question is not an open one. It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the State Legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction." (See also U. S. v. Unzeuta, 281 U. S. 138.)

The force of the Camp Lewis case is attacked by the Attorney-General on the claimed ground that it is against the weight of authority, both Federal and State, as is pointed out in the Haynie case, 297 S. W. 822. The Attorney-General, however, frankly adds that the Haynie case was itself reversed in the Surplus Trading Co. case already discussed. The holding of the Haynie case is concisely stated at 281 U. S. 650 as follows:

"The Supreme Court of the State, although recognizing that the status of Camp Pike was as just stated and that the property on which the tax was laid was in much the greater part located therein, rejected the contention that the tax laws of the State could not be applied to property so located consistently with the constitutional provision cited."

The taxing by the State of movables within a Military Reservation was the question involved in both the Camp Lewis and the Camp Pike cases. In the former the Washington Supreme Court held that the Federal constitutional provision had to be obeyed. The Arkansas Supreme Court [fol. 22] did not consider it to be within this provision and was reversed. Any criticism, therefore, found in the Haynie case, the fate of which was reversal, seems to fall of its own weight.

It is pointed out also that the Camp Lewis case is disapproved in Grayburg Oil Co, vs. State, 286 S. W., 489. In that case it is said, in discussing the Camp Lewis case, that whatever is said therein with respect to ceded territory ceasing to be a part of the State and becoming territory of the United States was not essential to the decision. But, as in the Arkansas case, whatever criticism might be found in the Grayburg decision is, to a large extent, if not entirely, nullified by the fate that it, too, met at the hands of the Supreme Court, where it was reversed (278 U. S., 582).

I am satisfied that after exclusive jurisdiction is ceded a Military Reservation remains within the State from which it was carved only in a broad, general and geographical sense; that it becomes United States territory and that in no legal sense does it remain within the State; that it certainly is not within the State's taxing jurisdiction any more than it is within the State's criminal jurisdiction.

Adverting to the the argument based upon the recognized purpose of the Gas Tax Act, namely, to collect by taxation money for highway construction and maintenance from those who drive on the highways: it is argued that if these Post Exchange sales were not held taxable the very purpose of the law would be defeated; that those entitled to buy gas at a Post Exchange at a three cent preferential price could use our highways without helping to pay for them; and it is argued that motorists residing in the Presidio drive over the highways of California far more than they drive over the roads within the Reservation. Con- [fol. 23] ceding this to be true, the solution of the problem is not aided. That problem, as has been pointed out already, is simply as to the meaning of that part of the Statute which prescribes the machinery for the collection of the tax upon which the State has to rely, and within the

provisions of which the State must bring itself in order legally to compel payment by the taxpayer.

The Attorney-General argues that if these Post Exchange sales are not held taxable the class of persons buying gasoline from the Exchanges, little by little, will be enlarged and the revenues of the State from this source will be correspondingly reduced, to the detriment of the highways, "An inch" it is said "once conceded, will, in time, be stretched to a foot, and so on". This argument for the exertion of the taxing power so as to increase and safeguard the State's revenues may be opposed, I am tempted to say parenthetically, by an argument equally cogent on the other side, phrased in Marshall's classic words "That the power to tax involves the power to destroy". But, after all, the record in this case shows that the number of persons entitled to buy from a Post Exchange is comparatively limited and restricted and the Army authorities cannot for a moment be presumed to sanction any improper or unwarranted enlargement of this class. If this ever gets to be a serious abuse its cure lies with the Legislature and not with the Courts.

No system of taxation can be perfect. There must be inevitably in the nature of things, hardships under every scheme of taxation, falling sometimes upon the taxpayer and sometimes upon the taxing power. No net for the [fol. 24] gathering of taxes can be made with a mesh so fine as to be absolutely impervious. Indeed, there readily comes to mind a case (of which there must be many throughout the State) where there are similar escapes. For instance, at Calexico gasoline delivered by the Standard Oil Company from a station on the California side of the border to a merchant on the Mexicali side is certainly a sale out of the State and not taxable, and yet the Mexicali merchant may fill his automobile with this gasoline and use it to drive as far over our Southern California highways as it will take him. This is precisely what happens in the Presidio, and it will not be seriously contended that a tank truck of gasoline delivered in Mexico would be a sale in this State.

The case of U. S. v. Gordy decided in the District Court of Maryland by Judge Coleman seems to involve substantially the same question as the one with which we are dealing. It is an added authority to those already cited, and

I would have been perhaps justified in simply ruling in this matter on the authority of that case. The importance of the case at bar, however, and the thorough way in which it has been briefed and presented by the Attorney-General, by counsel for the defendant, and by the amici curiæ on behalf of the Government, seemed to call for rather a fuller discussion, so that all concerned might know the reasons for the ruling.

The point just discussed is not nearly so interesting as the other two points, and because of the way in which they have been presented one is tempted to delve into the many cases cited under those heads, but time does not permit and nothing would be gained by it.

May I add again a word of keen appreciation of the way [fol. 25] in which the case has been presented. The briefs filed by all the counsel in the case have been able, thorough and exhaustive and by their full quotations they have greatly lightened the burden of research that otherwise would have been upon me.

As is already apparent, I am satisfied that the judgment should be for the defendant.

C. J. Goodell, Judge.

[fol. 26] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco No. 14739

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, Appellant,

vs.

STANDARD OIL COMPANY OF CALIFORNIA (a Corp.), Defendant, Respondent

On Appeal from the Superior Court in and for the City and County of San Francisco

JUDGMENT—May 1, 1933

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby reversed with directions to the court below to enter judgment for plaintiff as prayed. Appellant to recover costs on appeal.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 27] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. No. 14739

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant,

vs.

STANDARD OIL COMPANY OF CALIFORNIA, a Corporation, Defendant and Respondent

OPINION—Filed May 1, 1933

By the COURT:

This action is by the People of the State of California to recover from defendant a balance due for excise taxes imposed by the Act of 1923 (Stats. 1923, p. 571, chap. 267), as amended by the Statutes of 1927, pp. 1309 (Chap. 716) and 1565 (Chap. 795), based upon sales of gasoline to and deliveries at the Army Post Exchange located on the Presidio Military Reservation at San Francisco. The defendant had judgment in the court below and plaintiff prosecutes this appeal.

The case arises upon an agreed statement of facts, which show that beginning about July 1, 1929 and ending September 30th of the same year, defendant sold and delivered to said post exchange a certain quantity of motor vehicle fuel; that such gasoline was carried by defendant in barrels and tank trucks to the exchange and there delivered, defendant bearing the expense of and assuming the risk in such transportation; that the Presidio was established

as a military post under Spanish dominion in 1776; was continued as such by the Republic of Mexico and was ceded to the United States in 1848 by the Treaty of Guadalupe Hidalgo; that in 1850, by executive order, it was reserved for public purposes; that said order was modified in 1851, [fol. 28] from which year it has been continuously occupied by the United States as a military reservation; that, moreover on March 2, 1897, the Legislature of California ceded to the United States Government sole legislative jurisdiction over said reservation; that the Presidio Post Exchange at all times herein was an organization doing business under Army Regulation No. 210-65, dated June 29, 1929, as modified by Circular 57 of the War Department, dated October 31, 1929; that defendant duly reported said sales to the State Board of Equalization, as required, but declined to pay the tax due thereon, claiming that a sale to the post exchange was not to be considered in computing said tax.

The pertinent provisions of the said Act are: Section 1c (Stats. 1923, p. 572), which, so far as here material, defines a distributor to be one who refines, manufactures, produces or compounds motor vehicle fuel in this state and sells the same in this state (also covers other classes not here involved). Section 3 (Stats. 1923, p. 572) provides: "Every distributor shall * * * pay a license tax to the state * * * for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor *in this state* and sold and delivered by him *in this state*, or imported by such distributor into and distributed or sold by him in this state otherwise than in the original package * * *." Section 10, as amended in 1927, (Stats. 1927, p. 1309) provides for certain exemptions as follows: "The provisions of this act requiring the payment of license fees shall not be held or construed to apply to motor vehicle fuel imported into this state in interstate or foreign commerce and intended to be sold in the original and unbroken tank cars or other original receptacles, containers or packages and so sold while the same are in interstate or foreign commerce nor to any motor vehicle fuel exported or sold for exportation and exported for use outside this state, nor to any motor vehicle fuel *sold to the government*

of the United States or any department thereof for official use of said government but every distributor shall be re- [fol. 29] quired to report such exports and sales to the state board of equalization in such detail as that board may require."

We thus have presented the question whether sales and deliveries of gasoline at a military reservation under the sole jurisdiction of the United States, made to the Army Post Exchange therein, are to be excluded in fixing the license fees to be paid by the distributor under said act of the legislature. Or, in other words, is the post exchange at the presidio military reservation in San Francisco, entitled to purchase gasoline in this state at a price less than that paid by other persons admittedly coming under the act?

It is at once conceded, as already implied, that the military reservation in question is territory over which the United States exercises sole legislative authority. U. S. v. Watkins, 22 Fed. (2) 437; Peo. v. Mouse, 203 Cal. 782. It is contended that by reason of this concession, a sale consummated on it is a sale outside the state, as the consummated in Nevada or Oregon. It is our conclusion that the manifest intention of the act was to include all sales completed within the geographical confines of the state and for this purpose said military reservation was to be included like all other territory. The holding to the contrary in U. S. v. Cordy, 58 Fed. (2) 1013, is based upon the peculiar provisions of the act there involved under which it was held by the district court that the language of the act itself excluded sales made upon military reservations. This holding does not aid in the solution of the problem before us.

It is next urged that a sale to the Army Post Exchange is a sale to a department of the government of the United States for official use of said Government. Manifestly these sales are neither to a "department" of the Government nor for official use. The gasoline was sold to the exchange for resale to certain classes of persons for their [fol. 30] private consumption. We have no hesitation in concluding that the legislative intent was to include the sales in question in computing the tax. But these observations do not determine the cause.

We are pointed to the decision of the Supreme Court of the United States in the case of Panhandle Oil Co. v. Mis-

sissippi, 277 U. S. 218, where the court used language showing that an important question is here involved. There, as here, the State of Mississippi imposed an excise tax upon distributors of gasoline measured by sales within that state. The state sued the oil company to recover balances represented by sales to the United States for use of its Coast Guard service operating in the Gulf of Mexico and for its Veterans Hospital at Gulfport. The sales were made directly to the Government and the court held that said statute was inoperative as to them, using language in part as follows: "The States may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of federal functions. * * * The amount of money claimed by the State rises and falls precisely as does the quantity of gasoline so secured by the government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital. * * *" This was a five-four decision of the court; Justices Holmes, Brandeis, McReynolds and Stone dissented, Justice Holmes and McReynolds writing opinions.

But it seems to us that a well founded distinction may be found between the sales there involved and sales to an army post exchange. The commanding officer of an army [fol. 31] post is not required to organize the post exchange unless there is need for it unless the units present desire to participate therein or unless the personnel is sufficient to profitably maintain and support such an institution. In other words, a post exchange is at most but a government agency, designed to operate for the welfare of the troops such activities as a general store, meet or vegetable market or gasoline station, or a restaurant, gymnasium, recreation room, library or theater. Thus it is not properly described by the word "department" of the government in its activities. It is largely a cooperative institution, intended to supply the needs and promote the moral and civic betterment of the troops at the post.

It is supervised by an exchange council, composed of the commanding officers of the respective units represented in the organization. The funds of the exchange are not public

moneys within the meaning of the Revised Statutes (Rev. Stats. Sec. 5488, 90, 92). The exchange is not instituted by the aid of funds from the United States nor are its avails paid into the treasury. It is a voluntary, unincorporated, cooperative association in which all units share the benefits and all assume a position *analagous* to that of partners. In the event of the inability of the post exchange to pay its debts, the organizations which participate in it are supposed themselves to pay off all such obligations in proportion to their respective interests in the exchange. Neither the Government nor the officers of the post wherein the exchange is located are liable for its debts. The property of the post exchange is not to be treated as property belonging to the United States. The exchange itself is liable for certain Federal taxes, such as the stamp tax imposed by the Internal Revenue Act, the freight tax imposed by the War Revenue Act of 1917, a floor tax on tobacco under the [fol. 32] Revenue Act of 1919, sec. 702; sales of ice cream and soft drinks by a post exchange are subject to tax under the same act. From these and other observations that might be made, touching the nature of the organization of an army post exchange, we are of the opinion that it is an organization largely engaged in business of a private nature and that sales to it should not be beyond the reach of the taxing power of the state wherein it is located and that it is not one of those agencies thru which the Federal government exercises its constitutional or sovereign power.

The case of Thirty-first Infantry Post Exchange v. Posadas, 54 Philippine Reports 866, 876, throws some light on the question before us. There the Post Exchange drew into question the validity of a tax levied by the Government of the Philippine Islands on sales by local merchants to the exchange. The court sustained the tax and distinguished the Panhandle Oil case, supra, and, among other distinguishing features, it pointed out the following: "There the right of the United State to make purchases was derived from the United States Constitution; here the right of the Army Post Exchange to make purchases is derived from Army regulations and Army practice. There the sale was made to instrumentalities authorized by the constitution, which consumed the merchandise; here the sales were made to Army Post Exchanges not so constitutionally authorized, which merely acted as interme-

diaries. There it must be taken for granted that the Coast Guard Fleet and the Veterans' Hospital were constructed and operated by Government funds; here, except that buildings are provided by the United States Government for the Army Post Exchange, the latter are not so constructed and operated."

Again in Keane v. United States, 272 Fed. 577, it was [fol. 33] held that a conspiracy to defraud the United States was not made out by charging a conspiracy to defraud an army post exchange. We quote the syllabus: "A military post exchange, which is a voluntary association of companies, detachments, or other army units at military posts, permitted, but not required, by a special regulation of the War Department for the purpose of conducting for the benefit of the members of such units what is in effect a co-operative store and place of entertainment, with their own funds, and for whose contracts and obligations the United States is not responsible, and in whose funds it has no interest, tho its business is conducted by an officer detailed for the purpose, held not a 'department of the government', and proof of a conspiracy to defraud a post exchange held not to sustain an indictment, under Criminal Code, sec. 37, for conspiracy to defraud the United States."

Such cases as Surplus Trading Co. v. Cook, 281 U. S. 647 and Concessions Co. v. Morris (Wash.), 186 Pac. 655 and others of that class, which relate to taxation of personal property having its situs upon a military reservation in the exclusive jurisdiction of the United States are not in point and throw little if any light upon the question here involved.

Lastly, it is contended that the deliveries from San Francisco to the Presidio reservation constitute interstate commerce within the exclusive jurisdiction of the United States and that the State of California may not impede it by this form of taxation. The transactions in question were purely intrastate. There is no force in the contention that a sale and transportation from a point in California without the [fol. 34] reservation to the exchange on the reservation is interstate commerce. We are pointed to no Federal authority to this effect and, in reason, none should exist holding that a military reservation under the exclusive legislative authority of the United States is to be considered

in the same status as the District of Columbia or Alaska, or other territory having an autonomous existence. Under the plain holding in the case of Eastern Air Transport, Inc. v. South Carolina Tax Commission, 285 U. S. 147, interstate commerce would not be involved even if the sales were made of gasoline to be used thereafter by persons engaged exclusively in interstate transportation of goods.

The judgment is reversed with directions to the court below to enter judgment for plaintiff as prayed.

[fol. 35] [File endorsement omitted]

[fol. 36] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

RESPONDENT'S PETITION FOR A REHEARING—Filed May 22, 1933

To the Honorable William H. Waste, Chief Justice, and to the Associate Justices of the Supreme Court of the State of California:

I

The important issue in this case is not whether soldiers at the Presidio should pay three cents a gallon more for their gasoline or whether the California legislature intended them to do so. The question of national consequence is whether the State of California, after giving exclusive jurisdiction over certain territory to the United States for [fol. 37] federal military purposes, has the power thereafter to invade that territory and impose a tax without the sovereign's consent.

This paramount issue has been passed without a word by this court, despite the fact that the opinion recognizes the exclusive character of federal jurisdiction over the Presidio and the further fact that this court, in line with rulings of the United States Supreme Court, has heretofore insisted that lands ceded to the government for military purposes are subject to federal authority alone.

In support of its first contention that sales of gasoline made in the Presidio are not subject to the state gasoline

tax, respondent argued two propositions: first, as matter of construction, the legislature did not intend to include Presidio sales because of the uniform language of the act which confines its application to sales "within this state"; and second, as matter of jurisdiction, even though the legislature had intended to reach the Presidio sales, it was wholly without power to do so.

The opinion asserts in three places that the United States Government has exclusive jurisdiction:

"On March 2, 1897, the Legislature of California ceded to the United States Government *sole legislative jurisdiction* over said reservation. * * *

[fol. 38] "We thus have presented the question whether sales and deliveries of gasoline at a military reservation under the *sole jurisdiction* of the United States * * * are to be excluded in fixing the license fees to be paid by the distributor. * * *

"It is at once conceded, as already implied, that the military reservation in question is territory over which the United States exercises *sole legislative authority.*"

Despite this recognition of exclusive federal jurisdiction, the court dismisses respondent's contention in a single sentence:

"It is our conclusion that the manifest intention of the act was to include all sales completed within the geographical confines of the state, and for this purpose said military reservation was to be included like all other territory."

The court thus confines itself to only one of the questions presented, "the intention of the act." As to the second and graver proposition, on which the opinion is silent, it appears obvious that since the court finds sole jurisdiction and power to be in the United States, there can be no state jurisdiction or power to support the local legislative intent even if it were present. Yet the decision which has been reached necessarily implies that the state had such power. The conclusion of the court, therefore, cannot be reconciled with the statements of law in its opinion on the jurisdictional question.

[fol. 39] Nor can it be reconciled with the court's ruling in People v. Mouse, 203 Cal. 782, 786 (opinion by Preston, J.):

"* * * exclusive jurisdiction has been ceded to the United States over all grounds being used for military purposes. If then the institution in question, or the grounds in connection therewith, * * * is being used for military purposes within the meaning of said act of the state of California, jurisdiction of the United States is exclusive."

If the Mouse case is law, the logic of its application to this case is inescapable. It is clear, as the trial court said, that

"an offense * * * committed in the Presidio would not be in the *State* and hence not cognizable by our courts (see People v. Mouse, 203 Cal. 782). This seems to me to be a pretty good test. If exclusive jurisdiction has been transferred, how can it be said that goods delivered in the Presidio are still in the State for the purpose of measuring a tax when a theft of the same goods in the Presidio would not be 'in the State' for the purpose of trial and punishment?"

Unless the patent inconsistency between the decision in the Mouse case and the decision in this case is removed, a state of uncertainty will be created by the conflict.

II

The opinion raises grave doubt on another score. Respondent cited decisions of the United States Supreme [fol. 40] Court and of state jurisdictions, holding that states are without power to tax tangible personal property on military reservations under the exclusive jurisdiction of the federal government. These authorities are summarily dismissed by this court as not in point. It is earnestly emphasized that they are directly in point as holding that the power to tax can be exercised only when the subject sought to be taxed is within the taxing jurisdiction.

If the state is unable to tax tangibles at the Presidio because outside of its jurisdiction, how can it levy an excise or license or privilege tax upon a transaction which this court itself describes as having taken place entirely within the Presidio and outside of state jurisdiction?

The United States Supreme Court early established in a leading case (State Tax on Foreign-Held Bonds, 82 U. S. 300, 319) that subjects of taxation, whatever their character,

must be within the jurisdiction of the taxing state, and that this rule applies to all subjects of taxation alike, whether they be persons, property or business. The court said:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and *business*. Whatever form taxation may assume, whether as duties, imposts, *excises*, or *licenses*, it must relate to one of these subjects."

[fol. 41] Whether the California gasoline tax be described as a sales tax or business tax or distributor's tax, the sale was made, the business done and the distribution accomplished entirely within the Presidio, and the state has no power to impose a license or excise tax there. Furthermore, this court has held in People v. Ventura Refining Company (204 Cal. 286), opinion by Preston, J., that the tax in effect is collected from the consumer—in this case a resident of the Presidio.

If the court's decision were to stand, it would be consistent for the assessor in San Francisco to seek to include on his rolls the tangible personalty of the officers and enlisted men at the Presidio, and indeed the real property within the reservation.

III

One further point may be noted. The United States District Court in Maryland, in United States v. Cordy, 58 F. (2d) 1013, recently ruled that, because the United States Military Reservation in Fort Meade, Maryland, like the Presidio, is exclusively federal territory, gasoline sales made there are not subject to the Maryland gasoline tax act. This court states that the federal ruling in Maryland

"is based upon the peculiar provisions of the act there in-
[fol. 42] volved, under which it was held by the District Court that the language of the act itself excluded sales made upon military reservations. This holding does not aid in the solution of the problem before us."

The "peculiar provisions" of the Maryland act are almost identical with the provisions of the California act.

Maryland imposes the tax upon the dealer in motor vehicle fuel and defines him to be "any person * * * who imports * * * gasoline * * * for use, distribution or sale and delivery in, and after the same reaches, *the State* of Maryland." The same definition is made applicable to any person producing, refining, manufacturing or compounding motor vehicle fuel *in the state* for use, distribution or sale and delivery *therein*.

The California act requires the payment of the tax "for each gallon of motor vehicle fuel refined, manufactured, produced or compounded by such distributor *in this state* and sold and delivered by him *in this state* or imported * * * and distributed or sold * * * in *this state*."

It, therefore, cannot in justice be said that there is any language in the Maryland act differing from ours which places military reservations in a class apart or excludes sales made there. On the contrary, the provisions of the two statutes are substantially the same. If this court elects [fol. 43] to disagree with the court's reading of the plain meaning of words in the Maryland case, it cannot base its decision upon any difference in the terms of the two statutes.

IV

For the purposes of this petition, we have omitted reference to the contentions that deliveries to the Presidio are commerce within the exclusive jurisdiction of the United States, and that Post Exchanges are exempt from tax as federal instrumentalities. The first point is a corollary of the one stated in this petition; the second will be reserved for reargument if an opportunity is afforded.

Respondent respectfully petitions that this case be reheard and that this court's decision be reconsidered.

Dated San Francisco, May 19, 1933.

Pillsbury, Madison & Sutro, Felix T. Smith, V. K. Butler, Jr., Attorneys for Respondent and Petitioner.

[fol. 44] IN SUPREME COURT OF CALIFORNIA

In Bank

[Title omitted]

ORDER DENYING PETITION FOR REHEARING. Filed May 29, 1933

By the Court:

The petition for a rehearing herein is denied.
Mr. Justice Thompson voted for a rehearing.
Dated May 29, 1933.

Seawell, Acting Chief Justice.

[File endorsement omitted.]

[fol. 45] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL. Filed July 20, 1933

Petition for Appeal

Considering itself aggrieved by the final decision of the Supreme Court of the State of California in the above entitled cause, the defendant therein, Standard Oil Company of California, hereby prays that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

Assignment of Errors

And the said defendant, Standard Oil Company of California, assigns the following errors in the record and proceedings in the said case:

1. The Supreme Court of the State of California erred in upholding the validity of the California Motor Vehicle Fuel Tax Act, (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565) when applied to sales of gasoline made within the territorial limits [fol. 46] of the United States military reservation at the Presidio, San Francisco, California, to the Presidio Post Exchange.

2. The Supreme Court of the State of California erred in holding that the State of California, having given to the United States exclusive jurisdiction over certain territory known as the Presidio, for the establishment of a federal military reservation, has the power thereafter to invade that territory by the imposition of a tax upon sales therein, without the sovereign's consent.

3. The Supreme Court of the State of California erred in holding that sales and deliveries of gasoline from San Francisco to the Presidio Post Exchange are subject to excise taxes imposed by the California Motor Vehicle Fuel Tax Act (Cal. Stats. 1923, p. 574, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565).

4. The Supreme Court of the State of California erred in holding that deliveries of gasoline from San Francisco to the Presidio Post Exchange do not constitute commerce within the exclusive jurisdiction of the United States upon which the State of California may not levy a tax or impose a burden.

5. The Supreme Court of the State of California erred in holding that a sale of gasoline to the Presidio Post Exchange is not a sale to a department of the Government of the United States for the official use of the Government.

6. The Supreme Court of the State of California erred in reversing the judgment of the Superior Court of the State of California, with directions to that court to enter judgment for the plaintiff as prayed.

Prayer for Reversal.

For which errors the defendant, Standard Oil Company of California, prays that the said judgment of the Supreme Court of the State of California, dated May 4, 1933, in the above entitled cause, be reversed, and that the judgment of the Superior Court of the State of California in the [fol. 47] above entitled cause, in favor of the said defendant, be affirmed, and that the defendant be awarded its costs.

Dated July 14, 1933.

Felix T. Smith, V. K. Butler, Jr., Attorneys for Appellant.

[fol. 47½] [File endorsement omitted.]

[fol. 48] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 20, 1933

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of California on the 1st day of May, 1933, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause, as provided by law, and it is further ordered that the clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and [fol. 49] transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within sixty (60) days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $500.

Dated July 20, 1933.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 49½] [File endorsement omitted.]

[fols. 50-51½] Bond on appeal for $500.00, approved and filed July 20, 1933, omitted in printing.

[fols. 52-54b] Citation, in usual form, showing service on U. S. Webb, filed July 20, 1933, omitted in printing.

[fol. 55] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD
Filed July 26, 1933

It is hereby stipulated that the transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal heretofore allowed herein, shall include the following:

Complaint;
Answer;
Stipulation of Facts, including exhibit attached thereto, being Army Regulations No. 210 65, dated June 29, 1929, and as modified by Circular 57 of the War Department, dated October 31, 1929;
Findings of Fact and Conclusions of Law;
Judgment of the Superior Court;
Opinion of the Superior Court;
Judgment of the Supreme Court of California;
Opinion of the Supreme Court of California;
Respondent's Petition for Rehearing;
Order Denying Petition for Rehearing;
Petition for Appeal, Assignment of Errors, and Prayer for Reversal;
Statement under Rule 12;
Order Allowing Appeal;
Bond for Costs;
Citation;
Notice under Rule 12, paragraph 2, and Proof of Service; and
[fol. 56] Stipulation as to Contents of Transcript of Record.

Dated July 26th, 1933.

Felix T. Smith, V. K. Butler, Jr., Attorneys for Appellant. U. S. Webb, Attorney General of the State of California, by H. H. Linney, Deputy Attorney General.

[fol. 56½]. [File endorsement omitted.]

[fol. 57] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 58] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 15, 1933.

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this court in this case are as follows:

Point No. 1. The Supreme Court of the State of California erred in upholding the validity of the California Motor Vehicle Fuel Tax Act, (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565) when applied to sales of gasoline, made within the territorial limits of the United States military reservation at the Presidio, San Francisco, California, to the Presidio Post Exchange.

Point No. 2. The Supreme Court of the State of California erred in holding that the State of California, having ceded to the United States exclusive jurisdiction over certain territory known as the Presidio, San Francisco, for the establishment of a federal military reservation, has the power thereafter to invade that territory by the imposition of a tax upon sales therein, without the sovereign's consent.

[fol. 59] Point No. 3. The Supreme Court of the State of California erred in holding that sales and deliveries of gasoline from San Francisco to the Presidio Post Exchange are subject to excise taxes imposed by the California Motor Vehicle Fuel Tax Act (Cal. Stats. 1923, p. 571, chap. 267, as amended by the Statutes of 1927, pp. 1308, 1565).

Point No. 4. The Supreme Court of the State of California erred in holding that deliveries of gasoline from San Francisco to the Presidio Post Exchange do not constitute commerce within the exclusive jurisdiction of the United States upon which the State of California may not levy a tax or impose a burden.

Point No. 5. The Supreme Court of the State of California erred in holding that a sale of gasoline to the Presidio Post Exchange is not a sale to a department of the Government of the United States for the official use of the Government.

Point No. 6. The Supreme Court of the State of California erred in reversing the judgment of the Superior Court of the State of California, with directions to that court to enter judgment for the plaintiff as prayed.

The appellant further states that the whole of the record, as filed, is necessary for the consideration of the case, and that all parts of the record, as filed, are deemed necessary to be printed except Army Regulations No. 210-65, of which printed copies have been supplied by the appellant in accordance with the Act of February 13, 1911, c. 47, sec. 2 (36 Stat. 901, 28 U. S. C. sec. 866) and with Rule 32, paragraph [fols. 60 & 61] 6, Revised Rules of the Supreme Court of the United States. The appellant especially states that "Respondent's Petition for a Rehearing," and the order of the Supreme Court of the State of California denying the same, are deemed necessary to be printed.

Dated August 10th, 1933.

Oscar Sutro, Felix T. Smith, V. K. Butler, Jr., Counsel for Appellant.

Due service of receipt of a copy of the within statement of points to be relied upon and designation of the parts of the record to be printed is hereby acknowledged this 10th day of August, 1933.

U. S. Webb, Attorney General of the State of California, by H. H. Linney, Deputy Attorney General.

[fol. 62] [File endorsement omitted.]

Endorsed on cover: File No. 37,950. California Supreme Court. Term No. 347. Standard Oil Company of California, appellant, vs. The People of the State of California. Filed August 15, 1933. File No. 347, O. T., 1933.